

FILED 10 APR 02 0959 USDC ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KATHERINE L. MACGREGOR,

Plaintiff,

No. CV 09-6016-ST

OPINION AND ORDER

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MOSMAN, J.,

On March 8, 2010, Magistrate Judge Stewart issued Findings and Recommendation ("F&R") (#28) in the above-captioned case recommending that I REVERSE the Commissioner's decision and REMAND the case for further proceedings. No objections to the F&R were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are

addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation, and I ADOPT the F&R (#28) as my own opinion. For the reasons discussed in Judge Stewart's F&R, Dr. Barnes's opinion will be credited as true. The Commissioner's decision is REVERSED and the case is REMANDED to obtain testimony from a vocational expert regarding whether Ms. MacGregor is able to perform the full range of sedentary activity given her age and non-exertional impairments.

IT IS SO ORDERED.

DATED this 2 day of April, 2010.



MICHAEL W. MOSMAN
United States District Court